IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A No. 285 of 2000

Judgment reserved on: 24.8.2007

Date of Decision: September 28, 2007

Bhupinder Singh …Appellant

Versus

State of H.P. …Respondent

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Appellant : Mr. G.D.Verma, Sr.Advocate with Mr. Romesh Verma, Advocate.

For the Respondent(s) : Mr. J.S.Guleria, Law Officer.

Deepak Gupta, J.

This appeal is directed against the judgment of the learned Sessions Judge, Shimla in Sessions Trial No. 16-S/7 of 1999 whereby the accused has been convicted of having committed an offence punishable under Section 436 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.1000/-. In default of payment of fine, he has been directed to undergo rigorous imprisonment for a period of 6 months.

The prosecution case in brief is that Kanu Devi and Kewla Devi were two sisters who were both married to one Dilmi Ram.

Dilmi Ram expired about 9 years prior to the incident which took place on 21.7.21998. According to the prosecution, the accused Bhupinder Singh has been harassing the two sisters so as to coerce them to transfer their land and house to him. It was alleged that prior to the incident he had given beatings to both of them. Both the sisters left the house, 5 – 6 months prior to the incident and started living with their brother at Badlawag. On 27.7.1998, the sisters returned to their house in village Giyalat along one mason Mauji Ram. The purpose of their visit was to get the roof of their house repaired. After preparing and partaking their meals, the two sisters went to sleep in the kitchen. Mauji Ram slept in the adjoining room. Around 10 pm the accused came to the house and started kicking the door of the kitchen. He was shouting that the door be opened. The sisters Kanu and Kewla Devi got scared. They lifted the plank (Uman) covering the passage connecting the kitchen which was on the first floor with the cattle shed in the ground floor and escaped through the said passage. They came out from the house and hid in the maize fields. From the fields, they saw that the accused chained the door of the room in which Mauji Ram was sleeping from outside and thereafter the accused collected some hay, some fuel and set the house on fire and then he ran away. After the accused ran away, the sisters went to their neighbour's house and informed them about the incident. Thereafter their neighbour's, namely, Bobby, Bittu, Govind and Pinku came and extinguished the fire and one of the neighbours unchained the door of the room where Mauji Ram was sleeping.

Thereafter the two sisters and Mauji Ram spent the night at the house of Mangat Ram and Katnu Ram. They went back to their brother's place on 24.7.1998. They went to the Police Station, Chopal and lodged the report. Investigation was carried out and challan was filed. The accused pleaded not guilty and claimed trial. The learned trial court found the accused guilty and punished him as detailed above.

The main grounds raised by Shri G.D.Verma, learned senior counsel for the accused are that there is no explanation for the delay in lodging the FIR. It is contended that there are material contradictions in the statements of PW1 and PW2. There is no independent or reliable evidence. It is further alleged that even the ingredients of Section 436 IPC have not been made out, inasmuch as, there is no material on record to show that the intention of the accused was to destroy the house. It is also alleged that out of the two sisters only Kanu was examined and Kewla Devi was not examined and, therefore, an adverse inference has to be drawn against the prosecution.

To appreciate the contentions of the parties, it would be relevant to refer to the evidence recorded by the learned trial Court.

PW-1 is Kanu Devi. She in her statement has identified the accused. She has stated that he has been tormenting her and harassing her sister and, therefore, they left the house to escape his fury. She stated that she and her sister along with Mauji Ram went back to their house to get the roof repaired. At about 9 or 10 pm accused came to the house and kicked the

door of the kitchen where she and her sister were sleping. She stated that she and her sister escaped through the door meant for the entry/exit of the cattle and hid in the maize fields. Mauji Ram remained in the house. Thereafter the accused chained the door of the room in which Mauji Ram was sleeping and set the house on fire after collecting fuel, hay and firewood. After the accused left the site of the incident, they called the neighbours. Four boys, namely, Bobby, Bittu, Govind and Pinku came at the spot. She has stated that they did not raise alarm earlier since they were scared. She has estimated the loss about Rs.10,000/- to 15,000/-. She has also explained that the FIR was not lodged on the day of the occurrence for fear of the accused. Then she went to her brother's place. From there her brother took her to the police station to lodge the report. She has admitted that while making statement to the police after registration of the case, she has stated that the loss was estimated at only Rs.200/-. She has denied that the maize fieldss where they were hiding were 100 to 150 meters away from their house. She has also denied the suggestion that the accused could not be seen from the maize fields. She has explained that there are two doors fitted in her house. One door of about 4 -5 ft height is fitted in the kitchen and the other door of 6 -7 ft height is fitted in the room in which Mauji Ram was sleeping.

Mauji Ram was examined as PW-2. According to him at night through the window of the room in which he was sleeping he saw the accused with Jogti (burning torch made of wooden sticks). He also states that he saw the accused collecting hay

and fuel and setting the house on fire. According to him Kanu Devi and Kewla Devi escaped through the 'OBRA' (portion of the house meant for cattle). According to him, the room in which he was sleeping was chained from outside. After some time, four boys came from the village and extinguished the fire. He denied the suggestion that there was no window in any of the rooms of the house of Kanu Devi. He has denied the suggestion that he was not in the house of Kanu Devi and Kewla Devi on the day of occurrence. He has also denied the suggestion that he has made a false statement at the instance of the accused.

Mangat Ram is PW-4. He has stated that Kanu and Kewla Devi came to his house and told him that their house was on fire. He stated that he sent his sons to extinguish the fire. According to him, the two sisters had not told him as to how the house caught fire. He was declared hostile. According to him, his statement was not recorded though he was questioned. He was confronted with portion 'A' to 'A' of his purported statement under Section 161 Cr.P.C (Ex.PC) in which it was recorded that Kanu Devi had told him that Bhupinder Singh had set her house on fire. In cross-examination, he has stated that both he and the accused are Rajputs by caste whereas the complainant and her sister belong to the Scheduled Caste.

PW5 Katnu Ram has stated that Mauji Ram, mason came and stayed at his house. He was brought to his house by the sons of Mangat Ram. This witness states that Mauji Ram did not disclose anything to him as to why he wanted to sleep there. In

cross-examination, he has denied the fact that Mauji Ram was brought to sleep at his place since the accused had set fire to the house of Kanu and Kewla Devi. He has denied portion 'A' to 'A' of his purported statement wherein it is so recorded.

PW6 Govind Singh has stated that on 21.7.1998 at about 10 pm, Kanu Devi came to his house and told him that their house was on fire. She did not tell him as to how the house caught fire. In cross-examination by the Public Prosecutor, he stated that he along with three brothers extinguished the fire. He also admits that Mauji Ram was in the adjoining room of the house of Kanu and Kewla Devi and the door of the said room was chained from outside. They unchained the door and took Mauji Ram to the house of Katnu Ram. He has also been confronted with the statement wherein it has been recorded that the two sisters had informed him that the accused had set their house on fire. In cross-examination he admitted that the two sisters had abandoned their house and were living with their parents for the last about six months.

From the aforesaid material on record, it is obvious that the house of the two sisters did catch fire. The only question is whether it was the accused who set the house on fire or it was an accidental fire.

PW1 and PW2, who are the eye-witnesses, have clearly and in unambiguous terms stated that the accused had set the house on fire. No doubt the other witnesses have not supported this version. However, they also admit that the house had caught fire and four village boys went there to extinguish the fire.

Though PW-6 has turned hostile but in cross-examination has admitted that Mauji Ram was present at the spot and that the door in which Mauji Ram was sleeping was chained from outside. PW5 Katnu Ram admitted that Mauji Ram was brought to his house to sleep for the night. PW4 also states that Katnu and Kewla Devi came to his house and told him that their house was on fire.

All the three witnesses have feigned ignorance about how the fire started. According to them, they were not told about the cause of the fire. This cannot be believed. It is human nature that when any person is informed of an incident like a fire his first question would be how did the fire occur. This is normal human curiosity and it is not believable that PWs 4 to 6 did not even inquire as to how the fire started. The statements of PW 1 & 2 are corroborated in material aspects by the statements of PWs 4, 5 & 6. The factum of fire is corroborated by all the witnesses. Presence of Mauji Ram on the spot is also proved even from the statement of the witnesses who have turned hostile. Another important factor which must be taken into consideration is that after the fire had been extinguished, both the sisters slept in the house of Mangat Ram whereas Mauji Ram slept in the house of Kantu Ram. In case the fire was accidental and had been extinguished, they would have continued to sleep in their own house.

I am of the considered opinion that there are no material contradictions in the statements of PW-1 & PW-2. Their statements in fact have been corroborated to a large extent by

the remaining witnesses. Evidence of PW1 and PW2 is reliable evidence. Mere non production of Kewla Devi is not a sufficient ground to draw an adverse inference against the prosecution. Her statement would have been similar to that of her sister.

As far as delay in lodging the FIR is concerned, PW1 has explained that she was scared of the accused and after the date of occurrence, on the next day, she went to the house of her parents and it was only thereafter that her brother took her to the Police Station, Chopal to lodge the FIR. There is no manner of doubt that the two sisters were mortally scared of the accused and had abandoned their house because of fear. It would not be unreasonable to believe that they were scared and therefore, did not lodge the report. It was only after they had talked about the fire to the male members of the family that the report was lodged.

There is sufficient material on record to show that the accused/appellant intended to cause destruction of the house. When a person collects hay, fuel wood and sets the house on fire, it is clear that his intention is to cause destruction of the building. He walked away after setting the house on fire. If the sisters had not taken the help of the villagers, the fire may not have been extinguished. Therefore, there is no merit in the arguments that the ingredients of Section 436 IPC have not been proved.

As far as sentence imposed upon the accused/appellant is concerned, I am of the opinion that a person like the appellant/accused, deserves no leniency. Here is a person

belonging to one of the higher castes who with impunity has threatened two widows belonging to the Scheduled Caste community and set their house on fire. No interference in the sentence is called for.

In view of the above discussion, I find no merit in this appeal and the same is accordingly dismissed. Bail bonds furnished by the accused/appellant are cancelled.

The accused-appellant is directed to surrender before the learned Sessions Judge, Shimla within six weeks from today failing which the learned Sessions Judge shall proceed against him in accordance with law.

September 28, 2007 (Deepak Gupta), J.

s.